

change reform. The interconnection piece focuses on measures to stimulate competition.

Congress recognized that the timing and benefits of competition in rural areas remain speculative, as evidenced in the numerous rural safeguards in the 1996 Act.<sup>24</sup> In contrast, the unfinished universal service joint board is the admitted linchpin of the goal of evolving services, reasonable and affordable rates and services in rural areas.

With its focus on stimulating competition, the Order operates primarily to advance the immediate interests of competing carriers. Until universal service, infrastructure sharing and access reform are completed and harmonized, the measures to safeguard the interests of residential and rural consumers and their traditional universal service providers in the new environment will not be in place and proper economic entry signals will remain obscured. Thus, although the Commission urges that new “competition” must go forward under its interconnection regime pending review,<sup>25</sup> its own words support the contrary conclusion: A stay will prevent entry under the perverse marketplace signals that will remain in place until the rest

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<sup>24</sup> *E.g.*, section 251(f) (1) and (2) (rural exemption, modification and suspension relief from measures to “jump start” competition), section 253 (b) (preserving state universal service authority in preempting bans to competition); section 253 (f) (reserving state power to limit competitors in rural LEC areas to area-wide entry); section 254 (requiring “sufficient” universal service cost recovery to achieve national policy)’ section 214(e) (providing for support to state-designated universal service providers) and section 259 (recognizing right of small and rural universal service providers to share infrastructure economics of scale of neighboring large ILECs under non - common carrier business arrangements).

<sup>25</sup> *See*, Order of September 17, 1996, FCC 96-378 denying stay of GTE Corporation and Southern New England Telephone Company.

of the “trilogy” defines the post-Act competitive marketplace ground rules and effectuates the consumer safeguards Congress enacted.<sup>26</sup>

### III. CONCLUSION.

The RTC respectfully requests the Commission to grant this limited stay. Limited relief that stays the rules in sections 51.303, 51.405 and 51.809 is appropriate because the RTC has shown that there is a high probability that it will prevail on the merits in a challenge to these rules. A stay will prevent irreparable injury to the members of the associations and the rural customers they serve. The injury to petitioners from denial of a stay is greater than any conceivable injury that other parties would suffer if these rules are allowed to become effective immediately. A stay will promote the public interest by preserving the status quo pending the outcome of judicial review and ensuring an orderly transition to the new regime provided in the

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<sup>26</sup> The need for decisions applying the rural exemption provides a further concrete example of why, in the unique circumstances presented by this landmark legislation, a stay so issues on review may be resolved will affirmatively serve the public interest: The state must determine, in part, whether a bona fide request for exempted interconnection under section 251(f)(1)(b) “is consistent with section 254. . .,” the Act’s universal service section. Until the pending joint board proceeding to implement that section completes that task, it is simply not possible to determine how an interconnection burden will compare with the Act’s universal service mandates.

Telecommunications Act. A stay will also benefit the public by preventing the wasteful expenditure of financial and personnel resources.

Respectfully submitted,

THE RURAL TELEPHONE COALITION

By: Margot Smiley Humphrey  
Margot Smiley Humphrey

National Rural Telecom Association  
Koteen & Naftalin, LLP  
1150 Connecticut Ave., NW, Suite 1000  
Washington, D.C. 20036  
(202) 467-5700

By: David Cosson  
David Cosson  
L. Marie Guillory

National Telephone Cooperative Association  
2626 Pennsylvania Ave., NW  
Washington, D.C. 20037  
(202) 298-2300

By: Lisa M. Zaina  
Lisa M. Zaina

Organization for the Promotion and Advancement  
of Small Telecommunications Companies  
21 Dupont Circle, NW, Suite 700  
Washington, D.C. 20036  
(202) 659-5990

October 2, 1996

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

|   |   |                     |
|---|---|---------------------|
| In the Matter of                        | ) |                     |
|   | ) |                     |
| Implementation of the Local Competition | ) | CC Docket No. 96-98 |
| Provisions in the Telecommunications    | ) |                     |
| Act of 1996                             | ) |                     |

AFFIDAVIT OF LAWRENCE C. WARE

Lawrence C. Ware, being duly sworn according to law, states as follows:

1. I am Vice President of the National Telephone Cooperative Association (NTCA). In that capacity, my duties include assisting NTCA members with business development, exploring ways that NTCA members may deploy emerging technologies, and responding to new regulations.

2. Prior to joining NTCA, I held general management positions in the telecommunications industry for 35 years which is inclusive of my 19 years of service as the general manager of the Garden Valley Telephone Company (Garden Valley) from 1977 to March 1996. Garden Valley is a rural telephone cooperative serving over 14,000 access lines and headquartered in Erskine, Minnesota. The company currently serves less than 3 subscribers per route mile of facilities in 24 exchanges. As general manager I was responsible for the day to day operations of the company which at times included referring to outside technical experts to help guide the company business decisions.

3. In addition to my position with Garden Valley, I have held other positions in the telecommunications industry that have involved me with the operating and development decisions of small telephone companies. I have served as a director and president of the Minnesota Telephone Association (St. Paul) and was founding board member and chairman of Minnesota Equal Access Network Services ("MEANS") (Plymouth), a group of approximately 60 telcos that collectively provide equal-access and operate a fiber optic network throughout Minnesota. Other work with small, rural telephone companies include my positions as chairman of NTCA's Industry Committee and my service on the National Exchange Carrier Association (NECA) Board of Directors from its inception until 1992. In 1991 and 1992, I served as NECA board chairman. Additionally, I have personally appeared before the Minnesota Public Utilities Commission and the Minnesota legislature on behalf of small telephone companies in Minnesota.

4. I am familiar with the Federal Communications Commission's (FCC) *First Report and Order* issued August 8, 1996. This order purports to establish a framework of national rules implementing the local competition provisions of the Telecommunications Act of 1996. More specifically, the order details the rules implementing Section 251(f)(1) of the Act which provides for an exemption from Section 251(c) interconnection requirements as applied to rural telephone companies. The order and accompanying rules place the burden on the rural telco to prove that it should be entitled to maintain the exemption in Section 251(f)(1) and seems to interpret a continuing exemption as an unlikely exception despite the significant differences between rural and other telephone companies. As a former general manager of a rural telephone company and as a long term administrator in the telecommunications industry in general, I can

attest to the impact these new rules will have on small, rural telephone companies.

5. The order also establishes a strict standard that must be met to meet the burden of proof on economic consequences. Section 51.405 (c) of the rules requires "an incumbent LEC [to] offer evidence that the application of the requirements of Section 251(c) of the Act would be likely to cause [an] undue economic burden beyond the economic burden that is typically associated with efficient competitive entry." Both the fact that the burden of proof has been allocated to the incumbent rural telco and that the Commission has further defined the burdens by a vague and unconventional standard and suggested that the exemption is reserved for exceptional cases are enough to provoke the prudent telephone company manager to make the necessary preparations to effectively deal with impending bona fide requests. The statute on its face, and the Commission proceeding to implement Section 251 did not convey to managers of small companies the impending issue of burden of proof and the cost that it entails. Now that the burden of proof has been placed on incumbent rural telcos (47 C.F.R. § 51.405) under very demanding standards, managers must face the fact that huge costs associated with attempts to meet that burden may prevent them from maintaining their exemptions contained in the Act.

6. The Commission's rules become effective on October 1, 1996, and as currently written, rural telephone companies such as Garden Valley will be forced to make substantial investments beyond those intended by Congress, if they have not done so already.

7. According to section 251(f)(1)(B) of the statute, once a request is filed, the

state commission has 120 days to determine whether the exemption will be removed. Knowing the short span of time a rural telephone company would have once a request is made, a manager would have to complete certain tasks in advance of a bona fide request. To compile the evidence to prove that the bona fide request presents an "undue economic burden beyond the economic burden that is typically associated with efficient competitive entry," most incumbent rural LECs will have to hire outside experts to perform detailed studies. Because there are no detailed rules and no accepted industry practices for conducting TELRIC studies, the studies will require accounting, economic, and engineering expertise.

8. I have conferred with the engineering and accounting consultants currently used by Garden Valley to determine the cost of engineering design and TELRIC studies. In my capacity as general manager of Garden Valley I conferred with these same outside consultants for a number of years on matters requiring such studies. In speaking with the consultants with regard to this matter, I learned that the charge for a TELRIC study to determine the cost underlying charges for interconnection, unbundled elements and resale prices is estimated at \$30,000.

9. A TELRIC study must be preceded by an engineering design study to determine the cost of modern efficient plant. The professional engineering firm that I consulted quoted \$210,000 as the approximate price of an engineering design study. The charge for an engineering study upon which a TELRIC study would be based may be somewhat less. The firm typically performs such engineering and design work for small independent telephone companies

which will normally charge between \$15 and \$20 per access line. Of the small rural companies the firm services, Garden Valley because of its 14,000 access lines actually possesses the economies of scale to be offered the \$15 low-end of the range for the study. On a per access line basis, smaller rural telcos will have to pay more than the price quoted for Garden Valley for such a study. In my capacity as NTCA Vice President, I am aware that the average NTCA member serves 4,378 access lines, which means that the average member would pay approximately \$60,000 to \$90,000 for the required engineering study.

10. In addition to the expense of hiring such technical outside consultants, a small company would also have to hire legal counsel to advise its managers as to how to insure proper compliance with the rules and to prepare for hearings that would take place at the state commission. Again, the state commission has 120 days to act on the bona fide request even under the heavier standard the FCC has interposed which dictates the need for such preparations. A telephone company would be forced to hire counsel immediately in anticipation of the filing of a bona fide request because once the request is made, the 120 day period is triggered. It would be futile for an attorney and other consultants to try to prepare physical plant design cost studies and a case in this limited time.


11. There is also the matter of a manager and his staff's time being drawn away from the actual running of the company to attend to these matters. In this sense, the parties that matter the most are also disserved the most by the commission's new rules. The customers of Garden Valley and other small rural telephone companies lose the attention of their



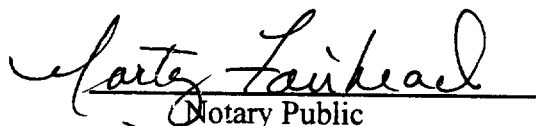
management when their management is forced to devote time to litigating administrative proceedings. In a small company, the business of meeting with attorneys, consulting with outside experts, and making the general preparations necessary to appear in state proceedings is performed directly by the company's management. A proceeding to terminate the rural exemption is likely to have a significant effect on any small company and would require the direct involvement of its management.

12. Customers and the general public will have no means of recovering the losses that result when management and operational personnel are forced to divert time to needless administrative proceedings. The burden of proof rules will cause irreparable injury to rural telcos because they may have to expend large amounts of the company's financial and human resources in advance only to find the rules will be changed on appeal. Further, there is a strong likelihood that the telcos will not be able to meet the substantial burden contained in section 51.405(c). The burden of these costs will fall on those customers who are not attractive for competitors to serve. These customers will be deprived of the rural safeguards provided for in the 1996 Act and have no means of recovering the loss of this benefit.

The affiant says nothing further.

  
Lawrence C. Ware

Subscribed and sworn to  
before me this 27th day of  
August, 1996.

  
Marty Fairhead  
Notary Public  
my commission expires 5/31/99

CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Motion for Stay Pending Judicial Review of the Rural Telephone Coalition was served on this 2nd day of October 1996, by first-class, U.S. Mail, postage prepaid on all parties on record in the interconnection proceeding, CC Docket 96-98.

Rita H. Bolden  
Rita H. Bolden

Chairman Reed E. Hundt  
Federal Communications Commission  
1919 M Street, N.W., Room 814-0101  
Washington, D.C. 20554

Commissioner James H. Quello  
Federal Communications Commission  
1919 M Street, N.W., Room 802-0106  
Washington, D.C. 20554

Commissioner Rachelle B. Chong  
Federal Communications Commission  
1919 M Street, N.W., Room 844-0105  
Washington, D.C. 20554

Commissioner Susan Ness  
Federal Communications Commission  
1919 M Street, N.W., Room 832-0104  
Washington, D.C. 20554

Mr. Kent Nilsson, Chief  
Network Services Division  
Common Carrier Bureau  
Federal Communications Commission  
2000 L Street, N.W., Room 253  
Washington, D.C. 20554

International Transcription Service  
2100 M Street, N.W.  
Suite 140  
Washington, D.C. 20037

Janice Myles (1cc&1disk)  
Federal Communications Commission  
1919 M Street, NW  
Room 544  
Washington, DC 20554

David L. Meier  
Cincinnati Bell  
201 E. Fourth Street  
P.O. Box 2301  
Cincinnati, OH 45201

Robert J. Hix  
Vincent Majkowski  
Colorado PUC  
1580 Logan Street  
Office Level 2  
Denver, CO 80203

Bruce Hagen  
Susan E. Wefald  
Leo M. Reinbold  
North Dakota PSC  
600 E. Boulevard  
Bismarck, ND 58505

Ann Kutter  
Douglas Elfner  
NYS Consumer Protection Board  
99 Washington Avenue - Suite 1020  
Albany, NY 12210

W. Benny Won #76385  
Public Utility Section  
Oregon Department of Justice  
1162 Court Street, NE  
Salem, OR 97310

Carol Weinhaus  
Telecommunications Industries Analysis Project  
University of Florida College of Business Admin.  
121 Mt. Vernon Street  
Boston, MA 02108

Edward C. Addison  
Virginia State Corporation Commission  
Division of Communications  
P.O. Box 1197  
Richmond, VA 23218

Richard A. Finnigan  
Washington Independent Telephone Assn.  
2405 Evergreen Park Drive, SW  
Suite B-1  
Olympia, WA 98502

Philip L. Verveer  
Sue D. Blumenfeld  
Thomas Jones  
Willkie Farr & Gallagher  
Three Lafayette Centre - 1155 21st Street, NW  
Washington, DC 20036

David Turetsky  
Carl Shapiro  
Antitrust Division  
US Department of Justice  
555 4th Street, NW - Room 8104  
Washington, DC 20001

Andrew Joskow  
John Haynes  
Antitrust Division  
US Department of Justice  
555 4th Street, NW - Room 8104  
Washington, DC 20001

Barry Grossman  
Antitrust Division  
US Department of Justice  
555 4th Street, NW - Room 8104  
Washington, DC 20001

Michael F. Altschul  
Randall S. Coleman  
Cellular Telecommunications Industry Assn.  
1250 Connecticut Avenue, NW  
Suite 200  
Washington, DC 20036

Rachel J. Rothstein  
Ann P. Morton  
Cable & Wireless, Inc.  
8219 Leesburg Pike  
Vienna, VA 22182

Howard J. Symons  
Sara S. Seidman  
Mintz, Levin, Cohn, Ferris, Glovsky and  
Popeo, PC  
701 Pennsylvania Avenue, NW - Suite 900  
Washington, DC 20004

Bridger Mitchell  
Charles River Associates, Inc.  
285 Hamilton Avenue  
Suite 370  
Palo Alto, CA 94301

Anne K. Bingaman  
Antitrust Division  
US Department of Justice  
555 4th Street, NW - Room 8104  
Washington, DC 20001

John Henly  
Antitrust Division  
US Department of Justice  
555 4th Street, NW - Room 8104  
Washington, DC 20001

Donald J. Russell  
Luin Fitch  
Antitrust Division  
US Department of Justice  
555 4th Street, NW - Room 8104  
Washington, DC 20001

James D. Ellis  
Robert M. Lynch  
David F. Brown  
SBC communications, Inc.  
175 E. Houston - Room 1254  
San Antonio, TX 78205

Danny E. Adams  
John J. Heitmann  
Kelley Drye & Warren, LLP  
1200 19th Street, NW  
Washington, DC 20036

Cindy Schonhaut  
Intelcom Group (USA) Inc.  
9605 East Maroon Circle  
Englewood, CO 80112

Albert H. Kramer  
Robert F. Aldrich  
Dickstein, Shapiro & Morin, LLP  
2101 L Street, NW  
Washington, DC 20037

Stephen R. Rosen  
Theodore M. Weitz  
Lucent Technologies, Inc.  
475 South Street  
Morristown, NJ 07962

Riley M. Murphy  
Charles Kallenbach  
American Communications Services, Inc.  
131 National Business Parkway  
Suite 100  
Annapolis Junction, MD 20701

Brad E. Mutschelknaus  
Steve A. Augustino  
Marieann Zochowski  
Kelley Drye & Warren  
1200 19th Street, NW - Suite 500  
Washington, DC 20036

Mary L. Brown  
MCI  
1801 Pennsylvania Avenue, NW  
Washington, DC 20006

David W. Carpenter  
Peter D. Keisler  
Sidley & Austin  
1722 Eye Street, NW  
Washington, DC 20006

David L. Lawson  
David M. Levy  
Sidley & Austin  
1722 Eye Street, NW  
Washington, DC 20006

Mark C. Rosenblum  
Roy E. Hoffinger  
AT&T  
295 North Maple Avenue  
Room 324511  
Basking Ridge, NJ 07920

Stephen C. Garavito  
Richard H. Rubin  
AT&T  
295 North Maple Avenue  
Room 324511  
Basking Ridge, NJ 07920

Joel E. Lubin  
Richard N. Clarke  
AT&T  
295 North Maple Avenue  
Room 324511  
Basking Ridge, NJ 07920

Karen E. Weis  
AT&T  
295 North Maple Avenue  
Room 324511  
Basking Ridge, NJ 07920

Kent E. Lillie  
Shop At Home, Inc.  
5210 Schubert Road  
Knoxville, TN 37912

James A. Eibel  
Network Reliability Council II Secretariat  
7613 William Penn Place  
Indianapolis, IN 46256

Christopher C. Kempley  
Deborah R. Scott  
Arizona Corporation Comm.  
1200 West Washington Street  
Phoenix, AZ 85007

Robert S. Tongren  
David C. Bergmann  
Office of the Consumers' Counsel  
77 South High Street - 15th Floor  
Columbus, OH 43266

Thomas J. O'Brien  
Karen J. Hardie  
Office of the Consumers' Counsel  
77 South High Street - 15th Floor  
Columbus, OH 43266

Agris Pavlovskis  
Michigan Exchange Carriers Assn., Inc.  
1400 Michigan National Tower  
Lansing, MI 48901

Glen A. Schmiede  
Mark J. Burzych  
Foster, Swift, Collins & Smith, PC  
313 South Washington Square  
Lansing, MI 48933

Peter A. Rohrbach  
Linda L. Oliver  
Kyle D. Dixon  
Hogan & Hartson, LLP  
555 13th Street, NW  
Washington, DC 20004

Bradley C. Stillman  
Dr. Mark N. Cooper  
Consumer Federation of America  
1424 16th Street, NW  
Washington, DC 20036

Steven T. Nouse  
PUC of Ohio  
180 East Broad Street  
Columbus, OH 43266

Stephen G. Oxley  
Wyoming PSC  
700 W. 21st Street  
Cheyenne, WY 82002

Werner K. Hartenberger  
Leonard J. Kennedy  
Dow, Lohnes & Albertson  
1200 New Hampshire Avenue, NW - Suite 800  
Washington, DC 20036

Laura H. Phillips  
J.G. Harrington  
Dow, Lohnes & Albertson  
1200 New Hampshire Avenue, NW - Suite 800  
Washington, DC 20036

Stephen L. Goodman  
Halprin, Temple, Goodman & Sugrue  
1100 New York Avenue  
Suite 650 - East Tower  
Washington, DC 20005

John G. Lamb, Jr.  
Northern Telecom Inc.  
2100 Lakeside Boulevard  
Richardson, TX 75081

Wayne V. Black  
C. Douglas Jarrett  
Susan M. Hafeli  
Keller and Heckman  
1001 G. Street, NW - Suite 500 West  
Washington, DC 20001

Mark J. Golden  
Robert R. Cohen  
Personal Communications Industry Assn.  
500 Montgomery Street - Suite 700  
Alexandria, VA 22314

Timothy R. Graham  
Robert M. Berger  
Joseph M. Sandri, Jr.  
Winstar Communications, Inc.  
1146 19th Street, NW  
Washington, DC 20036

Charles C. Hunter  
Hunger & ow, PC  
1620 Eye Street, NW  
Suite 701  
Washington, DC 20006

Mike Pabian  
Larry Peck  
Gary Phillips  
Ameritech  
30 South Wacker Drive  
Chicago, IL 60606

William P. Barr  
Ward W. Wueste  
Gail L. Polivy  
GTE  
1850 M Street, NW - Suite 1200  
Washington, DC 20036

Leon M. Kestenbaum  
Jay C. Keithley  
H. Richard Juhnke  
1850 M Street, NW - 11th Floor  
Washington, DC 20036

Madelyn M. DeMatteo  
Alfred J. Brunetti  
Maura C. Bollinger  
SNET  
227 Church Street  
New Haven, CT 06506

Dana Frix  
Maury C. Albert  
Antony R. Petrilla  
Swidler & Berlin, Chtd.  
3000 K Street, NW - Suite 300  
Washington, DC 20007

Laurie Pappas  
Texas Office of Public Utility Counsel  
7800 Shoal Creek  
Suite 290-E  
Austin, TX 78757

Thomas P. Hester  
Kelly R. Welsh  
John T. Lenahan  
Ameritech  
30 South Wacker Drive  
Chicago, IL 60606

Antoinette Cook Bush  
Linda G. Morrison  
Skadden, Arps, Slate, Meagher & Flom  
1440 New York Avenue, NW  
Washington, DC 20005

Richard E. Wiley  
R. Michael Senkowski  
Jeffrey S. Linder  
Wiley, Rein & Fielding  
1776 K Street, NW  
Washington, DC 20006

Rodney J. Joyce  
J. Thomas Nolan  
Ginsburg, Feldman and Bress  
1250 Connecticut Avenue, NW  
Washington, DC 20036

Michael H. Hammer  
Michael G. Jones  
Jennifer L. Desmond  
Willkie Farr & Gallagher  
Three Lafayette Centre - 1155 21st Street, NW  
Washington, DC 20036



Genevieve Morelli  
Competitive Telecommunications Assn.  
1140 Connecticut Avenue, NW  
Suite 220  
Washington, DC 20036

Aaron I. Fleischman  
Richard Rubin  
Fleischman and Walsh, LLP  
1400 16th Street, NW  
Washington, DC 20036

Paul B. Jones  
Janis A. Stahlhut  
Donald F. Shephard  
Timer Warner Communications Holdings, Inc.  
300 Stamford Place  
Stamford, CT 06902

Daniel J. Brenner  
Neal M. Goldberg  
David L. Nicoll  
NCTA  
1724 Massachusetts Avenue, NW  
Washington, DC 20036

Charon R. Harris  
Jennifer A. Purvis  
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, PPC  
701 Pennsylvania Avenue, NW - Suite 900  
Washington, DC 20004

Jot D. Carpenter  
Telecommunications Industry Assn.  
1201 Pennsylvania Avenue, NW  
Suite 315  
Washington, DC 20044

Andrew D. Lipman  
Russell M. Blau  
Swidler & Berlin, Chtd.  
3000 K Street, NW  
Suite 300  
Washington, DC 20007

Robert J. Aamoth  
Wendy I. Kirchick  
Reed Smith Shaw & McClay  
1301 K Street, NW  
Suite 1100 - East Tower  
Washington, DC 20005

Mitchell F. Brecher  
Steven N. Teplitz  
Fleischman and Walsh, LLP  
1400 16th Street, NW  
Washington, DC 20036

Richard J. Metzger  
Emily Williams  
Association for Local Telecommunications Services  
1200 19th Street, NW  
Suite 560  
Washington, DC 20036

Howard J. Symons  
Cherie R. Kiser  
Christopher J. Harvie  
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, PPC  
701 Pennsylvania Avenue, NW - Suite 900  
Washington, DC 20004

Saul Fisher  
William J. Balcerski  
NYNEX  
1111 Westchester Avenue  
White Plains, NY 10604

David N. Porter  
MFS Communications Co., Inc.  
3000 K Street, NW  
Suite 300  
Washington, DC 20007

Paul Rodgers  
Charles D. Gray  
James Bradford Ramsay  
NARUC  
1102 ICC Building - P.O. Box 684  
Washington, DC 20044

Robert B. McKenna  
Kathryn Marie Krause  
James T. Hannon  
U S WEST  
1020 19th Street, NW - Suite 700  
Washington, DC 20036

Karen Finstad Hammel  
Montana PSC  
1701 Prospect Avenue  
P.O. Box 202601  
Helena, MT 59620

E. Barclay Jackson  
New Hampshire PUC  
8 Old Suncook Road  
Concord, NH 03301

Stephen F. Mecham  
160 East 300 South  
P.O. Box 45585  
Salt Lake City, UT 84145

Sheldon M. Katz  
Vermont Department of Public Service  
Drawer 20  
Montpelier, VT 05620

Rolayne Ailts  
SD PUC  
500 E. Capital  
Pierre, SD 57501

Edward D. Young, III  
Michael E. Glover  
Leslie A. Vial  
1320 North Court House Road  
Eighth Floor  
Arlington, VA 22201

Joel B. Shifman  
Maine PUC  
242 State Street - State House Station No. 18  
Augusta, ME 04333

Commissioner Lowell C. Johnson  
Nebraska PSC  
300 The Atrium  
1200 N Street,  
P.O. Box 94927  
Lincoln, NE 68509

David Kaufman  
New Mexico State Corporation Comm.  
P.O. Box 1269  
Santa Fe, NM 87504

Michael L. Ginsberg  
160 East 300 South  
P.O. Box 146751  
Salt Lake City, UT 84145

George E. Young  
Vermont Public Service Board  
Drawer 20  
Montpelier, VT 05620

Terrence P. McGarty  
COMAV, Corp.  
60 State Street - 22nd Floor  
Boston, MA 02109

Richard M. Tettlebaum  
Citizens Utilities Company  
1400 16th Street, NW  
Suite 500  
Washington, DC 20036

Robert A. Mazer  
Albert Shuldiner  
Mary Pape  
Vinson & Elkins  
1455 Pennsylvania Avenue, NW  
Washington, DC 20004

Earl Pace  
BDPA  
1250 Connecticut Avenue, NW  
Suite 610  
Washington, DC 20036

Richard N. Koch  
10 Lilac Street  
Sharon, MA 02067

Anne P. Schelle  
American Personal Communications  
One Democracy Center  
6901 Rockledge Drive  
Suite 600  
Bethesda, MD 20817

Alan Ciamporcerio  
Pacific Telesis  
1275 Pennsylvania Avenue, NW  
Suite 400  
Washington, DC 20004

Robert C. Schoonmaker  
GVNW Inc./Management  
P.O. Box 25969  
Colorado Springs, CO 80936

Eric J. Branfman  
GST Telecom, Inc.  
3000 K Street, NW  
Suite 300  
Washington, DC 20007

J. Manning Lee  
Teleport Communications Group, Inc.  
One Teleport Drive  
Suit 300  
Staten Island, NY 10311

John Crump  
National Bar Assn.  
1225 11th Street, NW  
Washington, DC 20001

Dwight E. Zimmerman  
Illinois Independent Telephone Assn.  
RR 13, 24B Oakmont Road  
Bloomington, IL 61704

Aliceann Wohlbruck  
National Association of Development Organizations  
444 North Capitol Street, NW  
Suite 630  
Washington, DC 20001

Charles H. Kennedy  
James A. Casey  
Morrison & Foerster, LLP  
2000 Pennsylvania Avenue, NW  
Suite 5500  
Washington, DC 20006

Charles H. Carrathers, III  
Hunton & Williams  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, VA 23219

Mark J. Tauber  
Kecia Boney  
Mark J. O'Connor  
Piper & Marbury, LLP  
1200 19th Street, NW  
Washington, DC 20036

Paul Glist  
Cole, Raywid & Braverman  
1919 Pennsylvania Avenue, NW  
Suite 200  
Washington, DC 20006

Anthony M. Black  
Bell, Boyd & Lloyd  
1615 L Street, NW  
Suite 1200  
Washington, DC 20036

Dana Frix  
Swidler & Berlin  
3000 K Street, NW  
Suite 300  
Washington, DC 20007

Mark J. Golden  
Robert R. Cohen  
Personal Communications Industry Assn.  
500 Montgomery Street  
Suite 700  
Alexandria, VA 22314

Carolyn C. Hill  
ALLTEL  
655 15th Street, NW  
Suite 220  
Washington, DC 20005

Jerome K. Blask  
Daniel E. Smith  
Gurman, Blask & Freedman, Chtd  
1400 16th Street, NW  
Suite 500  
Washington, DC 20036

Robert C. Glazier  
Indiana Utility Regulatory Commission  
302 W. Washington Street  
Room E306  
Indianapolis, IN 46204

Veronica M. Ahern  
Nixon Hargrave Devans & Doyle, LLP  
One Thomas Circle, NW  
Suite 800  
Washington, DC 20005

Antoinette R. Wike  
North Carolina Public Staff Utilities Commission  
P.O. Box 29520  
Raleigh, NC 27626

Joe D. Edge  
Richard J. Arsenault  
Tina M. Pidgeon  
Drinker, Biddle & Reath  
901 15th Street, NW  
Washington, DC 20005

Jere W. Glover  
David W. Zesiger  
US Small Business Administration  
409 Third Street, SW  
Suite 7800  
Washington, DC 20416

Charles H. Helein  
Helein & Associates, PC  
8180 Greensboro Drive  
Suite 700  
McLean, VA 22102

C.J. Cain  
Utilex, Inc.  
P.O. Box 991  
Greenville, NC 27834

James Baller  
The Baller Law Group  
1820 Jefferson Place, NW  
Suite 200  
Washington, DC 20036

Fiona Branton  
Information Technology Industry Council  
1250 Eye Street, NW  
Washington, DC 20005

John T. Scott, III  
Crowell & Moring  
1001 Pennsylvania Avenue, NW  
Washington, DC 20004

R. Glenn Rhyne  
South Carolina PSC  
P.O. Drawer 11649  
Columbia, SC 29211

Michael A. Rump  
Kansas City Power & Light Co.  
1201 Walnut  
P.O. Box 418679  
Kansas City, MO 64141

B.B. Knowles  
Georgia PSC  
244 Washington Street, SW  
Atlanta, GA 30334

Stephen E. Morgan  
Ohio Edison Co.  
78 South Main Street  
Akron, OH 44308

Linda R. Evers  
Ohio Edison Co.  
76 South Main Street  
Akron, OH 44308

Marc A. Stone  
Fred Williamson & Associates, Inc.  
2921 E. 91st Street  
Suite 200  
Tulsa, OK 74137

Pete Wanzenried  
State of California  
601 Sequoia Pacific Blvd.  
Sacramento, CA 95814

David Heinemann  
Julie Thomas Bowles  
Kansas Corp. Comm.  
1500 SW Arrowhead Road  
Topeka, KS 66604

David C. Bergmann  
Thomas J. O'Brien  
Karen J. Hardie  
Office of the Ohio Consumers' Counsel  
77 South High Street - 15th Floor  
Columbus, OH 43266

Colorado Independent Telephone Assn.  
3236 Hiwan Drive  
Evergreen, CO 80439

Nebraska Rural Development Comm.  
P.O. Box 94666  
Lincoln, NB 68509

Harold Crumpton  
Missouri PSC  
P.O. Box 360  
Jefferson City, MO 65102

Brian R. Moir  
Moir & Hardman  
2000 L Street, NW  
Suite 512  
Washington, DC 20036

Lawrence St. Blanc  
Gayle T. Kellner  
Louisiana PSC  
P.O. Box 91154  
Baton Rouge, LA 70821

Maureen A. Scott  
Pennsylvania PUC  
P.O. Box 3265  
Harrisburg, PA 17105

Jeffrey L. Sheldon  
Sean A. Stokes  
UTC  
1140 Connecticut Avenue, NW  
Suite 1140  
Washington, DC 20036

Lee M. Weiner  
Douglas W. Kinkoph  
LCI International Telecom Corp.  
8180 Greensboro Drive  
Suite 800  
McLean, VA 22102

Robert J. Aamoth  
Jonathan E. Canis  
Reed Smith Shaw & McClay  
1301 K Street, NW  
Suite 1100 - East Tower  
Washington, DC 20005

Eric E. Breisach  
Christopher C. Cinnamon  
Howard & Howard  
107 W. Michigan Avenue  
Suite 400  
Kalamazoo, MI 49007

Ronald J. Binz  
Debra Berlyn  
Competition Policy Institute  
1156 15th Street, NW  
Suite 310  
Washington, DC 20005

George Petrutsas  
Paul J. Feldman  
Fletcher, Heald & Hildreth, PLC  
1300 North 17th Street, 11th  
Rosslyn, VA 22209

Jonathan M. Chambers  
Sprint Spectrum, LP  
1801 K Street, NW  
Suite M-112  
Washington, DC 20036

Anne P. Schelle  
America PCS, LP  
6901 Rockledge Drive  
Suite 600  
Bethesda, MD 20817

Jonathan D. Blake  
Kurt A. Wimmer  
Covington & Burling  
1201 Pennsylvania Avenue, NW  
P.O. Box 7566  
Washington, DC 20044

Gerard J. Waldron  
Donna M. Epps  
Covington & Burling  
1201 Pennsylvania Avenue, NW  
P.O. Box 7566  
Washington, DC 20044

Susan M. Gately  
Susan Baldwin  
Economics and Technology, Inc.  
One Washington Mall  
Boston, MA 02108

Colleen Boothby  
Laura F.H. McDonald  
Levine, Blaszak, Block & Boothby  
1300 Connecticut Avenue, NW  
Suite 500  
Washington, DC 20036

J. Christopher Dance  
Kerry Tassopoulos  
Excel Telecommunications, Inc.  
9330 LBJ Freeway  
Suite 1220  
Dallas, TX 75243

Weldon B. Stutzman  
Idaho PUC  
P.O. Box 83720  
Boise, ID.. 83720

James U. Troup  
Arter & Hadden  
1801 K Street, NW  
Suite 400K  
Washington, DC 20006

Gary L. Mann  
Texas Statewide Telephone Coop., Inc.  
2711 LBJ Freeway  
Suite 560  
Dallas, TX 75234

Robert J. Sachs  
Howard B. Homonoff  
Continental Cablevision, Inc.  
Lewis Wharf, Pilot House  
Boston, MA 02110

Frank W. Lloyd  
Donna N. Lampert  
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo  
701 Pennsylvania avenue, NW  
Suite 900  
Washington, DC 20004

Paul J. Berman  
Alan C. Weixel  
Covington & Burling  
1201 Pennsylvania Avenue, NW  
P.O. Box 7566  
Washington, DC 20044

Thomas K. Crowe  
Law Office of Thomas K. Crowe, PC  
2300 M Street, NW  
Suite 800  
Washington, DC 20037

Prof. Nicholas Economides  
Stern School of Business  
New York University  
New York, NY 10012

Eric B. Witte  
Missouri PSC  
P.O. Box 360  
Jefferson City, MO 65102

Chris Barron  
TCA, Inc.  
3617 Betty Drive  
Colorado Springs, CO 80917

Brenda L. Fox  
Continental Cablevision, Inc.  
1320 19th Street  
Suite 201  
Washington, DC 20036

James U. Troup  
L. Charles Keller  
Arter & Hadden  
1801 K Street, NW  
Suite 400K  
Washington, DC 20006

Michael J. Shortley, III  
Frontier  
180 South Clinton Avenue  
Rochester, NY 14646

Margot Smiley Humphrey  
Koteen & Naftalin  
1150 Connecticut Avenue, NW  
Suite 1000  
Washington, DC 20036

Carolyn C. Hill  
655 15th Street, NW  
Suite 220  
Washington, DC 20005

Carol W. Northrop  
Christine M. Crowe  
Paul, Hasting, Janofsky & Walker  
1299 Pennsylvania Avenue, NW  
Tenth Floor  
Washington, DC 20004

Kathy L. Shobert  
General Communication, Inc.  
901 15th Street, NW  
Suite 900  
Washington, DC 20005

Mark J. Tauber  
Mark J. O'Connor  
Piper & Marbury, LLP  
1200 19th Street, NW  
Seventh Floor  
Washington, DC 20036

Howard J. Symons  
Cherie R. Kiser  
Russell C. Merbeth  
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, PC  
701 Pennsylvania Avenue, NW - Suite 900  
Washington, DC 20004

Robert S. Foosaner  
Lawrence R. Krevor  
Laura L. Holloway  
Nextel Communications, Inc.  
800 Connecticut Avenue, NW - Suite 1001  
Washington, DC 20006

Richard J. Johnson  
Moss & Barnett  
4800 Norwest Center  
90 South Seventh Street  
Minneapolis, MN 55402

Alfred M. Mamlet  
Colleen A. Sechrest  
Steptoe & Johnson, LLP  
1330 Connecticut Avenue, NW  
Washington, DC 20036

Richard Rubin  
Steven N. Teplitz  
Fleischman and Walsh, LLP  
1400 16th Street, NW  
Suite 600  
Washington, DC 20036

Don Schoer  
Alaska PUC  
1016 West Sixth Avenue  
Suite 400  
Anchorage, AK 99501

Joseph W. Waz, Jr.  
Beth O'Donnell  
Comcast Corporation  
1500 Market Street  
Philadelphia, PA 19102

Gene P. Belardi  
MobileMedia Communications, Inc.  
2101 Wilson Boulevard  
Suite 935  
Arlington, VA 22201



Daniel M. Waggoner  
Davis Wright Tremaine  
2600 Century Square  
1501 Fourth Avenue  
Seattle, WA 98101

David W. McGann  
Illinois Commerce Comm.  
160 North LaSalle Street  
Suite C-800  
Chicago, IL 60601

Susan Stevens Miller  
Maryland PSC  
Six St. Paul Street  
Baltimore, MD 21202

James N. Horwood  
Scott Strauss  
Wendy S. Lader  
Municipal Utilities  
1350 New York Avenue, NW - Suite 1100  
Washington, DC 20005

William J. Celio  
Michigan PSC  
6545 Mercantile Way  
Lansing, MI 48910

Ronald G. Choura  
Michigan PSC  
6545 Mercantile Way  
Lansing, MI 48910

Rebecca S. Weeks  
Carl Wayne Smith  
Defense Information Systems Agency  
701 S. Courthouse Road  
Arlington, VA 22204

Mary F. Newmeyer  
Alabama PSC  
P.O. Box 881  
Montgomery, AL 36101

Thomas R. Gibbon  
Charles A. Zielinski  
Anthony M. Black  
Bell, Boyd & Lloyd  
1615 L Street, NW - Suite 1200  
Washington, DC 20036

Lawrence D. Crocker, III  
PSC of DC  
450 Fifth Street, NW  
Washington, DC 20001

Gerald M. Zuckerman  
Edward B. Myers  
Communications and Energy Dispute Resolution  
Associates  
1825 Eye Street, NW - Suite 400  
Washington, DC 20006

Timothy E. Welch  
Hill and Welch  
1330 New Hampshire Avenue, NW  
Suite 113  
Washington, DC 20036

David A. Gross  
Kathleen Q. Abernathy  
AirTouch Communications, Inc.  
1818 N Street, NW  
Washington, DC 20036

Pamela Riley  
AirTouch Communications, Inc.  
One California Street  
San Francisco, CA 94111